

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

DANIELLE R. MARAGOS,

Plaintiff,

v.

CAROLYN W. COLVIN, Acting
Commissioner of the Social Security
Administration,

Defendant.

NO: 1:15-CV-67-RMP

ORDER GRANTING PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT

BEFORE THE COURT are Plaintiff Danielle R. Maragos' Motion for Summary Judgment, **ECF No. 11**, and Defendant Carolyn W. Colvin's Motion for Summary Judgment, **ECF No. 15**. The Court has reviewed the motions and the administrative record and is fully informed.

BACKGROUND

Danielle R. Maragos protectively filed applications for Supplemental Security Income (SSI) and Disability Insurance Benefits (DIB) on September 30, 2011, alleging disability since August 22, 2011, due to mental illness, bipolar disorder with hypomania, and arthritis in her back. ECF No. 8-5 at 2-17, ECF No.

1 8-6 at 22, Tr. 161-176, 208. The applications were denied initially and upon
2 reconsideration. ECF No. 8-4 at 2-5, 8-11, Tr. 109-112, 115-118. Ms. Maragos
3 requested a hearing on June 19, 2012. ECF No. 8-4 at 14-15, Tr. 121-122.
4 Administrative Law Judge (ALJ) Marie Palachuk held a hearing on August 13,
5 2013, at which Ms. Maragos, represented by counsel, Darius Ghazi, M.D. (medical
6 expert), Jay M. Toews, Ed.D. (psychological expert) and K. Diane Kramer
7 (vocational expert) testified. ECF No. 8-2 at 25-57, Tr. 24-56.

8 The ALJ issued an unfavorable decision on September 6, 2013, finding Ms.
9 Maragos was not disabled as defined in the Social Security Act. ECF No. 8-2 at
10 11-21, Tr. 10-20. The ALJ found that Ms. Maragos had not engaged in substantial
11 gainful activity since August 22, 2011, the alleged date of onset. ECF No. 8-2 at
12 13, Tr. 12. Further, the ALJ determined that Ms. Maragos had the following
13 severe impairments: chronic low back pain, major depressive disorder, generalized
14 anxiety disorder, and opioid addiction, in extended full remission by self-report.

15 *Id.*

16 However, the ALJ found that Ms. Maragos did not have an impairment or
17 combination of impairments that met or medically equaled the severity of one of
18 the listed impairments. ECF No. 8-2 at 15-16, Tr. 14-15. The ALJ further found
19 that Ms. Maragos had the residual function capacity (RFC) to perform a range of
20 light work with the following limitations:

21 she can only occasionally stoop, or climb stairs, ropes, ladders, or
scaffolds. She should also avoid even moderate exposure to hazards.

1 She is able to understand, remember and carry out simple, routine,
2 repetitive instructions involving up to 3-step commands, and she is able
3 to maintain attention and concentration for 2-hour intervals between
regularly scheduled breaks, but she should have no interactions with the
public.

4 ECF No. 8-2 at 16, Tr. 15.

5 The ALJ identified Ms. Maragos' past relevant work as a sales clerk, a
6 telephone solicitor, and a sales agent in finance. ECF No. 8-2 at 19-20, Tr. 18-19.
7 Given Ms. Maragos' age, education, work experience, and RFC, the vocational
8 expert testified that she was not able to perform her past relevant work. *Id.* Next,
9 the ALJ found that, considering Ms. Maragos' age, education, work experience and
10 RFC, and based on the testimony of the vocational expert, there were other jobs
11 that exist in significant numbers in the national economy that Ms. Maragos could
12 perform, including the jobs of office cleaner I, mail clerk, and electronics
13 assembler. ECF No. 8-2 at 21, Tr. 20.

14 Thus, the ALJ concluded that Ms. Maragos was not under a disability within
15 the meaning of the Social Security Act at any time from August 22, 2011, through
16 the date of the ALJ's decision. ECF No. 8-2 at 21, Tr. 20.

17 Ms. Maragos filed a request for review by the Appeals Council, which was
18 denied on January 15, 2015. ECF No. 8-2 at 2-5, Tr. 1-4. Ms. Maragos filed a
19 complaint in the District Court for the Eastern District of Washington on March
20 13, 2015. ECF No. 1, 3. The Commissioner answered the complaint on June 5,
21 2015. ECF No. 7. This matter is therefore properly before the Court pursuant to

1 42 U.S.C. § 405(g). Ms. Maragos filed a motion for summary judgment on
2 September 29, 2015. ECF No. 11. The Commissioner filed a cross motion for
3 summary judgment on December 17, 2015. ECF No. 15.

4 **STATEMENT OF FACTS**

5 The facts of the case are set forth in the administrative hearing transcript, the
6 ALJ's decision, and the briefs of the parties. They are only briefly summarized
7 here. Ms. Maragos was 27 years old at the alleged date of onset, August 22, 2011.
8 ECF No. 8-5 at 2, Tr. 161. She received her GED in 2008. ECF No. 8-6 at 23, Tr.
9 209. Ms. Maragos reported she stopped working in April of 2009 because she was
10 pregnant and put on bed rest. ECF No. 8-6 at 22, Tr. 208. She then alleged that
11 her impairments became severe enough to keep her from working by August 22,
12 2011. *Id.*

13 **STANDARD OF REVIEW**

14 Congress has provided a limited scope of judicial review of a
15 Commissioner's final decision. 42 U.S.C. § 405(g). A reviewing court must
16 uphold the Commissioner's decision, determined by an ALJ, when the decision is
17 supported by substantial evidence and not based on legal error. *See Jones v.*
18 *Heckler*, 760 F.2d 993, 995 (9th Cir. 1985). Substantial evidence is more than a
19 mere scintilla, but less than a preponderance. *Sorenson v. Weinberger*, 514 F.2d
20 1112, 1119 n.10 (9th Cir. 1975). Substantial evidence "means such relevant

1 evidence as a reasonable mind might accept as adequate to support a conclusion.”

2 *Richardson v. Perales*, 402 U.S. 389, 401 (1971) (internal citation omitted).

3 The reviewing court should uphold “such inferences and conclusions as the
4 [Commissioner] may reasonably draw from the evidence.” *Mark v. Celebrezze*,
5 348 F.2d 289, 293 (9th Cir. 1965). On review, the court considers the record as a
6 whole, not just the evidence supporting the Commissioner’s decision. *Weetman v.*
7 *Sullivan*, 877 F.2d 20, 22 (9th Cir. 1989); *see also Green v. Heckler*, 803 F.2d 528,
8 530 (9th Cir. 1986) (“This court must consider the record as a whole, weighing
9 both the evidence that supports and detracts from the [Commissioner’s]
10 conclusion.”). “[T]he key question is not whether there is substantial evidence that
11 could support a finding of disability, but whether there is substantial evidence to
12 support the Commissioner’s actual finding that claimant is not disabled.”

13 *Jamerson v. Chater*, 112 F.3d 1064, 1067 (9th Cir. 1997).

14 It is the role of the trier of fact, not the reviewing court, to resolve conflicts
15 in evidence. *Richardson*, 402 U.S. at 400. If evidence supports more than one
16 rational interpretation, the reviewing court may not substitute its judgment for that
17 of the Commissioner. *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999). Thus,
18 if there is substantial evidence to support the administrative findings, or if there is
19 conflicting evidence that will support a finding of either disability or nondisability,
20 the finding of the Commissioner is conclusive. *Sprague v. Bowen*, 812 F.2d 1226,
21 1229–30 (9th Cir. 1987).

SEQUENTIAL PROCESS

Under the Social Security Act (the “Act”),

an individual shall be considered to be disabled . . . if he is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.

42 U.S.C. § 1382c(a)(3)(A). The Act also provides that a claimant shall be determined to be under a disability only if her impairments are of such severity that the claimant is not only unable to do her previous work but cannot, considering the claimant's age, education, and work experience, engage in any other substantial gainful work which exists in the national economy. 42 U.S.C. § 1382c(a)(3)(B). “Thus, the definition of disability consists of both medical and vocational components.” *Edlund v. Massanari*, 253 F.3d 1152, 1157 (9th Cir. 2001).

The Commissioner has established a five-step sequential evaluation process for determining whether a claimant is disabled. 20 C.F.R. §§ 404.1520(a)(4) and 416.920(a)(4). Step one determines if the claimant is engaged in substantial gainful activities. If the claimant is engaged in substantial gainful activities, benefits are denied. 20 C.F.R. §§ 404.1520(a)(4)(i) and 416.920(a)(4)(i).

If the claimant is not engaged in substantial gainful activities, the ALJ, under step two, determines whether the claimant has a medically severe impairment or combination of impairments. If the claimant does not have a severe impairment or

1 combination of impairments, the disability claim is denied. 20 C.F.R. §§
2 404.1520(a)(4)(ii) and 416.920(a)(4)(ii).

3 If the impairment is severe, the evaluation proceeds to step three, which
4 compares the claimant's impairment to a number of listed impairments
5 acknowledged by the Commissioner to be so severe as to preclude substantial
6 gainful activity. 20 C.F.R. §§ 404.1520(a)(4)(iii) and 416.920(a)(4)(iii); see also
7 20 C.F.R. §§ 404, Subpt. P, App. 1 and 416, Subpt. I, App. 1. If the impairment
8 meets or equals one of the listed impairments, the claimant is conclusively
9 presumed to be disabled. 20 C.F.R. §§ 404.1520(a)(4)(iii) and 416.920(a)(4)(iii).

10 Before proceeding to step four, the claimant's RFC is assessed. 20 C.F.R.
11 §§ 404.1545(a)(1) and 416.945(a)(1). An individual's RFC is the ability to do
12 physical and mental work activities on a sustained basis despite limitations from
13 any impairments. 20 C.F.R. §§ 404.1545(a)(1) and 416.945(a)(1).

14 If the impairment is not one conclusively presumed to be disabling, the
15 evaluation proceeds to step four, where the ALJ determines whether the
16 impairment prevents the claimant from performing work she has performed in the
17 past. If the claimant is able to perform her previous work, the claimant is not
18 disabled. 20 C.F.R. §§ 404.1520(a)(4)(iv) and 416.920(a)(4)(iv).

19 If the claimant cannot perform her previous work, the final step considers
20 whether the claimant is able to perform other work in the national economy in light
21

1 of her RFC, age, education, and past work experience. 20 C.F.R. §§
2 404.1520(a)(4)(v) and 416.920(a)(4)(v).

3 At step five, the burden shifts to the Commissioner to show that (1) the
4 claimant can make an adjustment to other work, and (2) specific jobs exist in the
5 national economy which the claimant can perform. *Batson v. Comm'r of Soc. Sec.*
6 *Admin.*, 359 F.3d 1190, 1193-1194 (2004).

7 ISSUES

8 Ms. Maragos alleges that the ALJ committed reversible error by (1) failing
9 to properly evaluate whether her mental impairments met or medically equaled a
10 listing at step three, (2) failing to properly weigh the medical source opinions in the
11 record, and (3) failing to consider all her limitations in the RFC determination.

12 I. Step Three

13 Ms. Maragos asserts that the ALJ failed to evaluate the evidence and
14 properly analyze her mental impairments under listings 12.04 and 12.06 at step
15 three of the sequential evaluation process. ECF No. 11 at 14-19.

16 A claimant is conclusively disabled if her condition either meets or
17 medically equals a listed impairment, without any specific finding as to the
18 claimant's ability to perform her past relevant work or any other jobs. 20 C.F.R. §
19 404.1520(d). In determining whether a claimant with a mental impairment meets a
20 listed impairment, the ALJ considers: (1) whether specified diagnostic criteria
21 ("paragraph A" criteria) are met; and (2) whether specified functional restrictions

1 are present (“paragraph B” criteria). 20 C.F.R. § 404.1520a(b). The claimant’s
2 mental impairment must satisfy both the paragraph A and paragraph B criteria or
3 the paragraph C criteria alone to meet the listings. 20 C.F.R. Pt. 404, Subpt. P,
4 App. 1, §§ 12.04, 12.06.

5 A claimant who satisfies the diagnostic criteria contained in the listing for
6 “Affective Disorders” or “Anxiety Related Disorders” must be found disabled, if
7 her condition results in two or more of the following functional limitations:

- 8 1. Marked restriction in activities of daily living.
- 9 2. Marked difficulties in maintaining social functioning
- 10 3. Deficiencies of concentration, persistence, or pace resulting in
11 frequent failure to complete tasks in a timely manner (in work settings
or elsewhere)
- 12 4. Repeated episodes of deterioration or decompensation in work or
13 work-like settings which cause the individual to withdraw from that
situation or to experience exacerbation of signs and symptoms (which
may include deterioration of adaptive behaviors).

14
15 20 C.F.R. Pt. 404, Subpt. P, App. 1, §§ 12.04.B, 12.06.B. The purpose of the
16 functional criteria contained in paragraph B is to measure the severity of the
17 claimant’s impairment. *Id.* § 12.00.C. These criteria “describe impairment-related
18 functional limitations that are incompatible with the ability to do any gainful
19 activity.” *Id.* § 12.00.A.

20 The ALJ is required to evaluate the relevant evidence prior to concluding
21 that a claimant’s impairments do not meet or equal a listed impairment. *Lewis v.*

1 *Apfel*, 236 F.3d 503, 512 (9th Cir. 2001). “A boilerplate finding is insufficient to
2 support a conclusion that a claimant’s impairment does not do so.” *Id.*

3 In her decision, the ALJ considered listings 1.04, 12.04, 12.06, and 12.09.
4 ECF No. 8-2 at 15, Tr. 14. In her consideration of listings 12.04 and 12.06, the
5 ALJ failed to discuss a single piece of medical evidence. *Id.* Instead, the ALJ
6 concluded that Ms. Maragos failed to meet the criteria in paragraph B and
7 paragraph C of the listings without any mention of the paragraph A criteria. *Id.*
8 Thus, the ALJ failed to evaluate the relevant evidence prior to concluding that Ms.
9 Maragos did not meet or equal a listing as required under *Lewis*.

10 The Commissioner argues that any resulting error from this failure on the
11 part of the ALJ is harmless because the RFC determination was supported by
12 substantial evidence and adequately accounted for Plaintiff’s mental limitations.
13 ECF No. 15 at 14-15. But, the step three evaluation is separate from the RFC. If a
14 person meets or equals a listing, it is not necessary for the ALJ to continue through
15 the sequential evaluation process, therefore an RFC determination is not necessary.
16 20 C.F.R. § 404.1520(d)-(e). Had a proper step three determination been made,
17 there may not have been a need to continue with a RFC determination.

18 Furthermore, the ALJ noted in her decision that the functional limitations
19 assessed as part of the paragraph B criteria under step three were not a RFC, but
20 were only used to rate the severity of mental impairments at steps two and three.
21 ECF No. 10-2 at 16, Tr. 15. Therefore, even the ALJ recognized that the step three

1 evaluation was separate from the RFC. As such, the Commissioner's assertion that
2 any error at step three was harmless because the RFC determination was supported
3 by substantial evidence is without merit.

4 The Court finds the case should be remanded for further evaluation of the
5 evidence at step three of the sequential evaluation process.

6 **II. Medical Source Opinions**

7 Ms. Maragos argues that the ALJ failed to properly consider and weigh the
8 medical opinion expressed by Mahlon Dalley, Ph.D., Darius Ghazi, M.D., Gordon
9 Hale, M.D., and Jay M. Toews, Ed.D. ECF No. 11 at 4-14, 16-17.

10 In weighing medical source opinions, the ALJ should distinguish between
11 three different types of physicians: (1) treating physicians, who actually treat the
12 claimant; (2) examining physicians, who examine but do not treat the claimant;
13 and, (3) nonexamining physicians who neither treat nor examine the claimant.

14 *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1995). The ALJ should give more
15 weight to the opinion of a treating physician than to the opinion of an examining
16 physician. *Orn v. Astrue*, 495 F.3d 625, 631 (9th Cir. 2007). The ALJ should give
17 more weight to the opinion of an examining physician than to the opinion of a
18 nonexamining physician. *Id.*

19 When a treating physician's opinion is not contradicted by another
20 physician, the ALJ may reject the opinion only for "clear and convincing" reasons.
21 *Baxter v. Sullivan*, 923 F.2d 1391, 1396 (9th Cir. 1991). When a treating

1 physician's opinion is contradicted by another physician, the ALJ is only required
2 to provide "specific and legitimate reasons" for rejecting the opinion. *Murray v.*
3 *Heckler*, 722 F.2d 499, 502 (9th Cir. 1983). Likewise, when an examining
4 physician's opinion is not contradicted by another physician, the ALJ may reject
5 the opinion only for "clear and convincing" reasons. *Lester*, 81 F.2d at 830. When
6 an examining physician's opinion is contradicted by another physician, the ALJ is
7 only required to provide "specific and legitimate reasons" for rejecting the opinion.
8 *Id.* at 830-831.

9 The specific and legitimate standard can be met by the ALJ setting out a
10 detailed and thorough summary of the facts and conflicting clinical evidence,
11 stating her interpretation thereof, and making findings. *Magallanes v. Bowen*, 881
12 F.2d 747, 751 (9th Cir. 1989). The ALJ is required to do more than offer her
13 conclusions, she "must set forth [her] interpretations and explain why they, rather
14 than the doctors', are correct." *Embrey v. Bowen*, 849 F.2d 418, 421-422 (9th Cir.
15 1988).

16 **1. Mahlon Dalley, Ph.D.**

17 Dr. Dalley completed two psychological evaluations on Ms. Maragos at the
18 request of the Washington Department of Social and Health Services (DSHS).
19 ECF No. 8-7 at 6-13, 118-123, Tr. 240-247, 352-357. On August 19, 2011, Dr.
20 Dalley conducted an evaluation and testing, including a mental status exam, Trails
21 A and B testing, and a Minnesota Multiphasic Personality Inventory-2 (MMPI-2).

1 ECF No. 8-7 at 6-13, Tr. 240-247. Dr. Dalley diagnosed Ms. Maragos with major
2 depressive disorder, generalized anxiety disorder, opioid dependence on agonist
3 therapy, personality disorder, and a rule out of bipolar disorder. ECF No. 8-7 at 7-
4 8, Tr. 241-242. Dr. Dalley opined that Ms. Maragos had a severe¹ limitation in the
5 ability to communicate and perform effectively in a work setting with public
6 contact and a marked² limitation in the ability to perform routine tasks without
7 undue supervision, the ability to communicate and perform effectively in a work
8 setting with limited public contact, and to maintain appropriate behavior in a work
9 setting. ECF No. 8-7 at 8-9, Tr. 242-243.

10 On June 20, 2012, Dr. Dalley completed a second evaluation, which
11 included a review of the August 2011 evaluation, a mental status exam, Trails A
12 and B testing, and a MMPI-2. ECF No. 8-7 at 122, Tr. 356. Dr. Dalley diagnosed
13 Ms. Maragos with major depressive disorder, general anxiety disorder, opioid
14 dependency on agonist therapy, and a rule out of bipolar disorder. ECF No. 8-7 at
15 118, Tr. 352. Dr. Dalley stated that “[d]ue to the chronic nature of Ms. Maragos’s
16 current depression, health concerns, and anxiety, it is not likely that her condition

17
18 _____
19 ¹A severe limitation was defined as the “inability to perform one or more
basic work related activities. ECF No. 8-7 at 8, Tr. 242.

20 ²A marked limitation was defined as a “[v]ery significant interference.”
21 ECF No. 8-2 at 8, Tr. 242.

1 will improve within the next 12 months. Therefore, it is recommended she be
2 placed on the SSI track.” ECF No. 87- at 120, Tr. 354.

3 The ALJ gave Dr. Dalley’s assessments “little weight” because (1) DSHS
4 used difference regulations, (2) DSHS used difference definitions of “marked” for
5 assessing mental disorders, (3) DSHS had different standards and objectives than
6 the Social Security Administration, (4) the assessments were largely based on Ms.
7 Maragos’ self-reported symptoms and complaints, (5) since the evaluation was
8 conducted for the purpose of continuing state assistance, Ms. Maragos had an
9 incentive to overstate her symptoms and complaints, (6) the evaluation forms were
10 completed by checking boxes and contained few objective findings to support the
11 degree of limitation opined, and (7) Dr. Dalley’s opinion was inconsistent with her
12 own examination of Ms. Maragos. ECF No. 8-2 at 19, Tr. 18.

13 First, the ALJ was accurate that these evaluations were performed for the
14 purpose of qualifying for DSHS benefits. The Court acknowledges that the final
15 responsibility for deciding the issue of disability is reserved to the Commissioner.
16 S.S.R. 96-5p; 20 C.F.R. § 416.927(d). However, “our rules provide that
17 adjudicators must always carefully consider medical source opinions about any
18 issue, including opinions about issues that are reserved to the Commissioner.”
19 S.S.R. 96-5p. The regulations require every medical opinion to be evaluated,
20 regardless of its source. 20 C.F.R. § 416.927(c). Furthermore, the purpose for

1 which medical reports are prepared does not provide a legitimate basis for rejecting
2 them. *Lester*, 81 F.3d at 832.

3 Although Dr. Dalley's assessments were prepared for the purpose of
4 evaluating eligibility for DSHS benefits, the medical opinions which are the bases
5 of the reports must be considered by the ALJ. Therefore, the fact that DSHS used
6 different regulations, different definitions, and different standards or objectives is
7 irrelevant. Dr. Dalley's diagnoses were made in accord with the DSM-IV-TR,
8 which was the standard diagnostic criteria at the time, and the definitions for
9 severity of limitations opined was provided on the evaluation. ECF No. 8-7 at 7,
10 118, Tr. 241, 352. Therefore, the first three reasons provided by the ALJ for
11 rejecting Dr. Dalley's opinion are not legally sufficient.

12 The forth reason the ALJ provided for rejecting Dr. Dalley's opinion, that it
13 was based on Ms. Maragos' self-reports, is not a legally sufficient reason to reject
14 his opinion. A doctor's opinion may be discounted if it relies on a claimant's
15 unreliable self-report. *Bayliss v. Barnhart*, 427 F.3d 1211, 1217 (9th Cir. 2005);
16 *Tommasetti v. Astrue*, 533 F.3d 1035, 1041 (9th Cir. 2008). But the ALJ must
17 provide the basis for his conclusion that the opinion was based on a claimant's
18 self-reports. *Ghanim v. Colvin*, 763 F.3d 1154, 1162 (9th Cir. 2014). Here, the
19 ALJ failed to discuss why she determined that Dr. Dalley's opinion was based on
20 Ms. Maragos' self-reports and not on the testing and observations made at the

1 evaluations. Therefore, this reason is not legally sufficient to reject Dr. Dalley's
2 opinion.

3 The fifth reason the ALJ provided for rejecting Dr. Dalley's opinion, that
4 since the evaluation was conducted in order to continue state assistant, Ms.
5 Maragos had incentive to overstate her conditions and symptoms, is not legally
6 sufficient. While, as discussed above, a provider's reliance on the statements of a
7 claimant who has been deemed less than fully credible may be a reason for
8 rejecting the provider's opinion, the mere presence of the incentive to overstate, or
9 otherwise misrepresent one's impairments, is not. In every evaluation for the
10 purpose of qualifying for benefits, whether they be state assistance, worker's
11 compensation, or social security, there is an incentive to present one's impairments
12 greater than they may be. The ALJ must rely on actual evidence that a claimant
13 misrepresented herself or overstated her impairments at the evaluation. Here the
14 ALJ failed to provide a single citation to evidence in the record showing that Ms.
15 Maragos had misrepresented herself or overstated her impairments at the
16 evaluation with Dr. Dalley. The presence of an incentive alone is not enough.

17 The sixth reason the ALJ provided for rejecting Dr. Dalley's opinion was
18 that it was provided on a check-the-box form and contained few objective findings
19 to support the degree of limitation opined. The Ninth Circuit has expressed a
20 preference for individualized medical opinion over check-the-box reports. *See*
21 *Murray*, 722 F.2d at 501. The rationale for the preference is that check-the-box

1 forms do not contain an explanation for the basis of the provider's conclusion. *Id.*;
2 *Crane v. Shalala*, 76 F.3d 251, 253 (9th Cir. 1996).

3 Here, while the opinion was provided on a check-the-box form, the form
4 was accompanied by a detailed evaluation and psychological testing. ECF No. 8-7
5 at 6-13, Tr. 240-247. Additionally, under each limitation Dr. Dalley included a
6 rationale for his opinion. ECF No. 8-7 at 8-9, Tr. 2424-243. For example, under
7 his opinion that Ms. Maragos had a marked limitation in the ability to perform
8 routine tasks without under supervisions, Dr. Dalley stated "See Narrative
9 Addendum. Valid MMPI-2, code type 8-7, depressed, anxious, worried, agitated,
10 and tense." ECF No. 8-7 at 8, Tr. 242. Therefore, the ALJ's reason for rejecting
11 the opinion is not supported by substantial evidence and not legally sufficient.

12 The final reason the ALJ provided for rejecting Dr. Dalley's opinion, that it
13 was inconsistent with the objective findings of the evaluation, is also not a legally
14 sufficient reason. An ALJ may cite to internal inconsistencies in evaluating a
15 physician's report. *Bayliss*, 427 F.3d at 1216. The ALJ determined that Dr.
16 Dalley's opinion was inconsistent with her evaluation showing good memory,
17 average mental control, mild attention impairment, and the ability to obey simple
18 commands and cited to Exhibit 7F in support. ECF No. 8-2 at 19, Tr. 18. First,
19 Exhibit 7F is the June 20, 2012, evaluation, but Dr. Dalley's functional opinion
20 was provided in August of 2011. A finding made ten months after an opinion
21 cannot be used to undermine the reliability of the original opinion. After that

length of time, any change in functional level does not represent a contradiction to the original opinion, but instead a change in severity of symptoms with time. Furthermore, the ALJ fails to address how Dr. Dalley's finding of good memory, average mental control, mild attention impairment, and the ability to obey simple commands is inconsistent with Dr. Dalley's August 2011 opinion. *See Embrey*, 849 F.2d at 421-422 (The ALJ is required to do more than offer her conclusions, she "must set forth [her] interpretations and explain why they, rather than the doctors', are correct"). Therefore, the ALJ's reason is not legally sufficient to reject Dr. Dalley's opinion.

The ALJ failed to provide legally sufficient reasons to reject Dr. Dalley's opinion. Therefore, on remand, the ALJ is instructed to reconsider the opinion.

2. Remaining Medical Source Opinions

In addition to Dr. Dalley's opinion, Ms. Maragos asserts that the ALJ erred in evaluating the opinions of Darius Ghazi, M.D., Gordon Hale, M.D., and Jay M. Toews, Ed.D. ECF No. 11 at 4-14, 16-17. Considering the case is being remanded for the above reasons, the ALJ is instructed to readdress the weight provided to Dr. Ghazi, Dr. Hale, and Dr. Toews on remand.

III. RFC

Ms. Maragos challenges the RFC determination arguing that the ALJ failed to take into account all of her functional limitations, including those opined by Dr. Dalley. ECF No. 11 at 19-20.

1 A claimant's RFC is "the most [a claimant] can still do despite [her]
2 limitations." 20 C.F.R. § 416.945(a); *see also* 20 C.F.R. Part 404, Subpart P,
3 Appendix 2, § 200.00(c) (defining RFC as the "maximum degree to which the
4 individual retains the capacity for sustained performance of the physical-mental
5 requirements of jobs."). In formulating a RFC, the ALJ weighs medical and other
6 source opinions and also considers the claimant's credibility and ability to perform
7 daily activities. See, e.g., *Bray v. Comm'r, Soc. Sec. Admin.*, 554 F.3d 1219, 1226
8 (9th Cir. 2009).

9 Considering the case is being remanded for the ALJ to readdress the opinion
10 of Dr. Dalley and other medical source opinions provided in the record, the ALJ is
11 instructed to make a new RFC determination.

12 **REMEDY**

13 Further proceedings are necessary for the ALJ to determine if Ms. Maragos
14 has an impairment or combination of impairments that meet or medically equal a
15 listing, to evaluate and weigh medical source opinions, and to form a new RFC
16 determination. The ALJ will also need to supplement the record with any
17 outstanding or additional medical evidence and, if necessary, elicited testimony
18 from a psychological expert and a vocational expert.

19 / / /

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21 / / /

CONCLUSION

Accordingly, IT IS ORDERED:

1. Defendant's Motion for Summary Judgment, ECF No. 15, is

DENIED.

2. Plaintiff's Motion for Summary Judgment, ECF No. 11, is

GRANTED, and the matter is **REMANDED** to the Commissioner for additional proceedings consistent with this Order.

3. Application for attorney fees may be filed by separate motion.

The District Court Clerk is directed to file this Order and provide a copy to counsel for Plaintiff and Defendant. **Judgment shall be entered for Plaintiff** and the file shall be **CLOSED**.

DATED this 25th day of March 2016.

s/ Rosanna Malouf Peterson
ROSANNA MALOUF PETERSON
United States District Judge